

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTUAN WALDEN,

Plaintiff,

CASE NO. 1:15-CV-766

v.

HON. ROBERT J. JONKER

D. PALMER,

Defendant.

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 24) and Plaintiff Walden's Objection (ECF No. 25). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the

Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law. The Magistrate Judge properly found that Plaintiff failed to exhaust his First Amendment retaliation claim against Defendant Palmer. In his objection, Plaintiff primarily reiterates and expands arguments already made in his earlier briefing. Nothing in Plaintiff's objection changes the fundamental analysis. The Court agrees with the Magistrate Judge's conclusion that Defendant is entitled to the relief he seeks, for the very reasons the Report and Recommendation delineates.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 24) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendant Palmer's Motion for Summary Judgment (ECF No. 17) is **GRANTED**.

IT IS FURTHER ORDERED that for the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3).

See McGore v. Wrigglesworth, 114 F.3d 601, 611 (6th Cir. 1997).

This case is **DISMISSED**.

Dated: March 16, 2017

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE